

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Assessment and Collection)
of Regulatory Fees for) MD Docket No. 98-200
Fiscal Year 1999)

To: The Commission

REPLY COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation, on behalf of itself and its affiliates ("BellSouth"), by its attorneys, respectfully submits the following reply comments in response to the comments of certain other filers in the captioned proceeding. *See Notice of Inquiry*, MD Docket No. 98-200, FCC 98-298, released Dec. 4, 1998, 63 Fed. Reg. 70090 (Dec. 18, 1998) ("NOI"). In its comments filed on January 7, 1999, BellSouth recommended that the Commission (1) reclassify 900 MHz Specialized Mobile Radio Service ("SMRS") into the Commercial Mobile Radio Services ("CMRS") Messaging Services category; (2) delay a determination on the basis for assessing revenues for interstate telephone service providers until the conclusion of CC Docket No. 98-171 (*In the Matter of 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, *Notice of Proposed Rulemaking and Notice of Inquiry*,

FCC 98-233, released Sept. 25, 1998, 63 Fed. Reg. 54090 (Oct. 8, 1998)), which, in part, is addressing the basis for assessing contributions to the Telecommunications Relay Services fund; and (3) capture the costs associated with the development of a new service and assess it to the feeable category(ies) resulting from the new service—those developmental costs should not be apportioned to all feeable categories. Various comments addressed BellSouth's first and third recommendations; these comments will be addressed herein. BellSouth also supports those arguing that the CMRS Mobile Services and CMRS Messaging Services fee categories should not be merged into one fee category. No commenter discussed the second recommendation above; BellSouth's position in that regard remains unchanged.

I. COMMERCIAL MOBILE RADIO SERVICES

a. BellSouth agrees that the two CMRS fee categories should not be merged into one fee category.

The NOI mentioned that SBC Communications, Inc. ("SBC"), in a previous filing, had suggested that the Commission "adopt only a single CMRS fee covering all CMRS services," because "Congress and the Commission intended to create regulatory symmetry among the CMRS services." *See* NOI, *supra*, at 4. SBC argued that melding the two fee categories would "avoid any competitive advantage to narrowband personal communications service [] and specialized mobile radio [] service over cellular and broadband PCS (footnote omitted)." *Id.*

Paging Network, Inc. ("PageNet") was the only party to comment on the SBC proposal and rationale. *See* Comments of Paging Network, Inc. ("PageNet Comments"). BellSouth agrees with PageNet that the "Commission has already determined that the differences in the nature and regulation of messaging and two-way voice services warrant a different per unit

regulatory fee (footnote omitted)." PageNet Comments, at 2 (*citing Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 F.C.C.R. 17161, 17184 (1997)). PageNet correctly enumerated the main differences between messaging and two-way services that warrant the disparate regulatory fee treatment accorded the services, *e.g.*, "substantial difference in per unit revenue," "messaging carriers serve a greater number of subscribers on vastly less spectrum," and two-way voice services are subjected to certain regulatory obligations not imposed on messaging services. PageNet Comments, at 3-4.

SBC's theory that regulatory symmetry calls for a single CMRS fee category overlooks the appropriate discriminators PageNet has discussed. Consideration of those discriminators is warranted given the direction in the enabling legislation that calls for adjustments to the fees that take into account "factors reasonably related to the benefits provided to the payor." Section 9(b)(1)(A) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 159(b)(1)(A). PageNet has demonstrated that one CMRS fee category is not justified given the realities of the differences between two-way voice and non-voice CMRS services.

b. The 900 MHz SMR services of BellSouth Wireless Data, L.P. should be reclassified into the CMRS Messaging Services category.

In addition to BellSouth, four parties commented on the proper fee category classification of CMRS messaging or non-voice services. *See* PageNet Comments, at 5-7; Comments of ARDIS Company ("ARDIS Comments"), at 2-6; Comments of American Mobile Telecommunications Association, Inc. ("AMTA Comments"), at 5-8; and Comments by Small Business in Telecommunications ("SBT Comments"), at 2. Their individual positions have not varied from the way they were described in the instant NOI. *See* NOI, *supra*, at 3-5. However,

at bottom, the commenters all agree with BellSouth. Messaging or non-voice CMRS services should not be paying the higher fee assessed to payors in the CMRS Mobile Services fee category.

The PageNet Comments argue for creation of a "sub-category in the CMRS Mobile Services (footnote omitted)" for "900 MHz SMR systems that are not offering real time two-voice services." *See* PageNet Comments, at 5-6. This non-voice sub-category would be assessed at the CMRS Messaging Service fee rate. *See* PageNet Comments, at 6. The PageNet Comments argue that its proposed differentiation is warranted because of the "differences between network efficiency and regulatory burdens of non-voice and voice services." *Id.* BellSouth would have no objection to such an outcome.

In its comments, ARDIS, an 800 MHz SMR licensee, reminds the Commission that it has "consistently supported the position of BellSouth Wireless Data, L.P. ('BellSouth WD')" which previously has "requested revision of the demarcation between the CMRS Mobile Service fee category and the CMRS Messaging Service fee category." *See* ARDIS Comments, at 2-3. Like BellSouth WD, ARDIS "does not offer voice services at all;" its "offerings are much more closely akin to those provided by licensees in the CMRS Messaging category than those offered by cellular or broadband PCS licensees." *See* ARDIS Comments, at 5. The ARDIS Comments properly assert that the Commission's indiscriminate grouping of "all SMR licensees into the CMRS Mobile Service fee category -- without regard to the amount of spectrum held by such entities or their ability to compete with other broadband CMRS offerings -- violates Congress's mandate that competing mobile service providers be subject to comparable regulatory requirements (footnote omitted)." *Id.* Similar to PageNet and BellSouth, ARDIS advocates the

"establishment of a new CMRS Broadband Messaging Services or a Non-Voice Mobile Services fee category" to accommodate the non-voice or data-only services like those of ARDIS and BellSouth WD. *See* ARDIS Comments, at 5-6. BellSouth can support such an outcome.

The AMTA Comments delineate the history of the Association's involvement in the development of the current CMRS fee categories. *See* AMTA Comments, at 2-6. Against this background, AMTA noted its agreement with the Commission's creation of two CMRS fee categories but its disagreement with the criterion that relegates licensees to one category or the other. *See* AMTA Comments, at 6. AMTA characterizes "traditional SMR licensees" as those "granted either five 25 kHz channels at 800 MHz or ten 12.5 kHz channels at 900 MHz." *See* AMTA Comments, at 7. The AMTA Comments propound that the capacity and capability differences between "traditional SMR licensees" and cellular and broadband PCS licensees warrant reclassification of the traditional SMR systems into the CMRS Messaging Services fee category. *See* AMTA Comments, at 7-8. AMTA's argument is sound. BellSouth can support such an outcome.

The NOI characterized SBT's position regarding fee category classification as "SMR systems and public coast stations are within the CMRS Messaging Services fee category since these stations are authorized substantially less channel capacity than narrowband PCS stations (footnote omitted)." *See* NOI, *supra*, at 5. SBT does not deviate from its earlier comments in this proceeding. *See* SBT Comments, at 2. BellSouth has taken no position concerning the proper fees to be paid by public coast stations. However, BellSouth agrees with SBT to the extent that the BellSouth WD non-voice services should be classified in the CMRS Messaging Services fee category.

As stated above, all five commenters addressing the issue agree; messaging or non-voice CMRS services should not be paying the higher fee assessed to the CMRS Mobile Services fee category. Data or non-voice service like that offered by BellSouth WD should be included in the CMRS Mobile Services fee category or the new category/sub-category of non-voice services advocated by PageNet and ARDIS that would be assessed at the CMRS Mobile Services fee level. There is ample support in this record and the records of the two previous fee proceedings to justify such a determination by the Commission. *See In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186 and *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, MD Docket No. 98-36.

c. There are a number of alternatives for estimating the number of feeable units attributable to the data or non-voice services proposed to be added to the CMRS Messaging Services category.

Various comments, including BellSouth's, offer the Commission workable alternative sources of information that may be used to estimate with some degree of precision the number of feeable units attributable to the data or non-voice services proposed by BellSouth (and others) to be added to the CMRS Messaging Services or similar fee category. *See* BellSouth Comments, at 4-6 (the Commission's "Universal Licensing System" and "its existing databases"); SBT Comments, at 2-3 ("[p]rocessing the call signs in [the Commission's] regulatory fee records against the Commission's license data base"); and AMTA Comments, at 8-9 ("the annual report published by the Strategis Group in cooperation with AMTA, The State of SMR and Digital Mobile Radio"). The ARDIS Comments proffer that "it is possible for affected industry

members and the Commission to work together to develop a workable solution to any difficulties inherent in either the identification of affected authorizations or calculation of the number of affected feeable units." *See* ARDIS Comments, at 7. Thus, even if the specific alternatives proposed in the comments are found by the Commission, for some reason, to be unworkable, the Commission and the industry still have the option of sitting down and reaching a joint solution of the Commission's stated concerns.

II. THE DEVELOPMENTAL COSTS FOR A NEW SERVICE SHOULD NOT BE APPORTIONED TO ALL FEEABLE CATEGORIES.

In its comments, BellSouth opposed the Commission's suggestion in the NOI to add to its cost accounting system a regulatory category for "'new services,' which would impact payors in all services." *See* NOI, *supra*, at 7 and BellSouth Comments, at 7-9. In the main, BellSouth argued, and continues to advocate, that "dispersing the costs of development of a new service across all regulatory fee payors would run counter to the express guidance in the enabling statute, " (*see* BellSouth Comments at 8) which provides that fees are to be "adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities" *See* Section 9(b)(1)(A) of the Act, 47 U.S.C. §159(b)(1)(A).

The Personal Communications Industry Association seems to agree. In discussing this proposal, it concluded by asking the Commission to "ensure that CMRS licensees are not forced to pay regulatory fees that recover costs for activities unrelated to CMRS services." *See* Comments of the Personal Communications Industry Association, at 3.

Lockheed Martin Corporation ("Lockheed") appears to misperceive what the Commission has proposed. Its comments state that "[r]egulatory costs associated with . . . 'new

services' would be charged to the appropriate service." *See* Lockheed's Comments, at 5. It opposes such action. *Id.* To the contrary, the Commission suggested distributing the "[r]egulatory costs associated with the development of policy and rules for . . . new services throughout the Commission . . . across all fee payors." *See* NOI, *supra*, at 7.

Lockheed argues that implementation of its perception of the Commission's proposal would be difficult because "there can be no uniform definition of 'new services'" among the fee categories, "by reference to the technological enhancements that regulatees seek to implement," or "by reference to frequency bands," and developments within a payor category could be either new (and allocable to the "new service" cost bucket) or enhancements (and not so allocable). *See* Lockheed's Comments, at 5-6.

All of Lockheed's points deal with implementation not with what the enabling statute dictates. As far as implementation, the Commission has extensive experience with allocating the costs of price cap carriers. Given that background, the Commission should be able to identify the costs associated with the development of policy and rules for new services and apply those to the fee payors who are the beneficiaries of such new services. More importantly, the statute requires a nexus between the fee charged and the benefit conferred. For that reason, the Commission should capture the costs associated with the development of a new service and assess it to the feeable category(ies) resulting from the new service.

IV. CONCLUSION

Based on the foregoing, BellSouth recommends that the Commission (1) should reclassify 900 MHz SMR services into the CMRS Messaging Services or similar fee category with a similar regulatory fee assessment; and (2) should not be apportion the developmental costs for new services to all feeable categories.

Respectfully submitted,

BELLSOUTH CORPORATION

/s/ David G. Richards

William B. Barfield
M. Robert Sutherland
David G. Richards

1155 Peachtree Street, N.E.
Suite 1800
Atlanta, GA 30309-3610
(404) 249-4839

Its Attorneys

January 19, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of January, 1999, served a copy of the foregoing
REPLY COMMENTS OF BELL SOUTH CORPORATION in MD Docket No. 98-200, by
United States Mail, first class, postage prepaid, on the persons listed below, unless otherwise
indicated.

Magalie Roman Salas, Esq.*
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

International Transcription Service, Inc.*
1231 20th Street, N.W.
Washington, DC 20037

Terry Johnson*
Office of Managing Director
Federal Communications Commission
445 12th Street, S.W., Room 1-C807
Washington, DC 20554

Judith St. Ledger-Roty
Paul G. Madison
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Dennis C. Brown
Brown and Schwaninger
1835 K Street, N.W., Suite 650
Washington, DC 20006

Angela E. Giancarlo
Government Relations
Personal Communications Industry Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561

Alan R. Shark, President
American Mobile Telecommunications Association, Inc.
1150 18th Street, N.W., Suite 250
Washington, DC 20036

Elizabeth R. Sachs
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, N.W., Suite 1200
Washington, DC 20036

Matthew J. Whitehead II
Secretary and General Counsel
ARDIS Company
300 Knightsbridge Parkway
Lincolnshire, IL 60069

Raymond G. Bender
Trey Hanbury
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W., Suite 800
Washington, DC 20036

William D. Wallace
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

William F. Adler
Vice President, Legal and Regulatory Affairs
Globalstar, L.P.
3200 Zanker Road
San Jose, CA 95134

Stephen L. Goodman
Halprin, Temple, Goodman & Maher
1100 New York Avenue, N.W., Suite 650 East Tower
Washington, DC 20005

Joseph A. Godles
W. Kenneth Ferree
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, DC 20036

Gerald C. Musara
Vice President, Government and Regulatory Affairs
Lockheed Martin Global Telecommunications, Inc.
Crystal Square 2, Suite 403
1725 Jefferson Davis Highway
Arlington, VA 22202

Stephen M. Piper
Vice President and General Counsel
Lockheed Martin Global Telecommunications, Inc.
6701 Democracy Boulevard, Suite 900
Bethesda, MD 20817

Peter A. Rohrbach
Karis A. Hastings
Yaron Dori
Hogan & Hartson, L.L.P.
555 13th Street, N.W.
Washington, DC 20004

Philip V. Otero
Senior Vice President and General Counsel
GE American Communications, Inc.
Four Research Way
Princeton, NJ 08540

* - hand delivery

/s/ Pamela W. Martin
Pamela W. Martin